



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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June 11, 2007

Patricia A. Kurkul
Regional Administrator
Northeast Region
NMFS, NOAA
One Blackburn Drive
Gloucester, MA 01930-2298

RE: Draft Supplemental Environmental Impact Statement (DEIS) for Amendment 11
to the Atlantic Sea Scallop Fishery Management Plan CEQ No. 20070160

Dear Ms. Kurkul:

EPA is providing the comments to the National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service (NMFS), and the New England Fishery Management Council (Council) on the referenced document. These comments are offered in accordance with EPA's responsibilities under Section 309 of the Clean Air Act, Section 102(2)(C) of the National Environmental Policy Act (NEPA), and the Council on Environmental Quality's regulations for implementing NEPA.

The DEIS was prepared to explore strategies needed to control scallop fishing capacity and curb mortality resulting from fishermen who presently have open access to the scallop fishery. "Open access" means that any boat owner that wants his vessel permitted for scallop fishing may do so; there are no specific qualifications needed to receive a general category permit. While allowed under Amendment 4 to the Atlantic Sea Scallop Fishery Management Plan, open access has probably contributed greatly to exceeding current scallop fishery mortality objectives.

The document evaluated a series of "valued ecosystem components" (VECs) which represent both the scallop resources and human communities that will be affected by proposed management actions. Various VECs were assessed to determine the direct/indirect effects and cumulative impacts that resulted from past regulatory actions and their impacts on the basic sea scallop resource, their physical environment, fishing impacts on protected species, and fishery-related businesses and communities. New management options being considered include: limiting entry for general category fishing permits; a hard total allowable catch limit for the general category fishery; the establishment of a separate limited entry program in the Northern Gulf of Maine; incidental catch (meaning scallops taken while targeting other species) provisions; and

other measures to more quickly integrate recent scallop harvest data in the management process.

The document was well-written, rationally organized, and had clearly summarized past management actions that had, according to the DEIS, contributed to excessive scallop mortality in the fishery today. We have commented on two preferred alternatives that were discussed in the Management Plan.

1) Catch Limits - The proposed management plan recommends limiting scallop harvesting by general category fishery boats to 5% of total annual catch permitted to the fishery as a whole. While the DEIS acknowledges that limited access, by itself, will not entirely eliminate unsustainable scallop mortality, it will help reduce the risk of overfishing by preventing new entry to the general category fishery.

2) Limited Entry - The proposed Management Plan recommends limiting entry to the general category fishery, with entry qualifications based upon a license-holder's past years landing activity in the scallop fishery. The number of fishery participants would be selected based upon previous years scallop landing qualification criteria data within the qualification time period.

While EPA defers to NOAA/NMFS to determine the best management techniques that will achieve fishery objectives, we suggest that for the health and safety of fishermen, the Council select strategies that avoid "derby" type fishing. Derby fishing occurs when an annual total allowable catch (TAC) is established without daily catch limitations. Unrestricted TACs encourage risk-taking behavior such as going out in bad weather and working excessively long hours which increases the risk of accidents from operator fatigue.

Fishermen in local hearings (see Scoping Comments, Written Comments Received) suggested that scallop catch limits be assigned to vessels without regard to their size or capacity. EPA notes that this would place smaller-sized boats at a disadvantage because larger boats can generally travel faster and work during more dangerous weather thereby harvesting a greater percentage of TAC. Assigning future daily catch limits to individual vessels based upon their past history of scallop landings seems to be an equitable management plan.

Others suggested assigning catch limits to individual fishermen, rather than the boat, which is now the current practice. There is some risk, however, that assigning pound allotments or catch limits to individuals would create a "harvesting right" which itself could become a commodity to be sold or traded. We can easily envision an individual fisherman who, rather than going fishing, sells or trades his harvesting rights onshore, an undesirable outcome in our view. It is unlikely that creating a secondary paper market in un-harvested scallop meats would achieve fishery resource management objectives.

It is possible, however, that assigning catch limits to an individual (creating harvest rights described above) might be effective if fishing “sectors” and harvesting cooperatives were created, and TAC shares were awarded to each sector within the fishery. Groups would be formed around common fishing practices, common homeport, and common marketing arrangements. Eligibility criteria, operational plans, monitoring, enforcement of TAC, and allocation rules would be controlled by the fishermen themselves. According to previous EISs on the lobster fishery in the northeastern U.S., Maine lobster fishermen heavily depend upon mutual cooperation and self-governance in the management of local lobster resources.

Editorial Comments-

Pg 164, end of first paragraph - The Error note should be deleted and reference source included.

Pg 165, last paragraph, line 5 - The draft EIS states that... “The alternatives under consideration would reduce the potential pool of participants from 143 to around 705...” perhaps was intended to read... “The alternatives under consideration would reduce the potential pool of participants from 705 to 143...”

EPA rates this action as “LO” that is, lack of objections. The alternatives that were examined, impacts on threatened and endangered species, bycatch issues, and public participation processes were satisfactorily addressed in this document. For more information, please contact John Hamilton at (404) 562-9617.

Sincerely,

A handwritten signature in black ink, appearing to read "Heinz Mueller", with a stylized, flowing script.

Heinz J. Mueller, Chief
NEPA Program Office
Office of Policy and Management